

Serial No. 09/718,754
Amendment Dated March 10, 2006
Reply to Office Action of May 6, 2005

REMARKS/ARGUMENTS

Reconsideration of the present application is respectfully requested. After this amendment, claims 1 and 21 are pending.

Claims 6, 41, 44, and 45 have been cancelled. Applicants expressly reserve the right to file divisional or continuation applications or take such other appropriate measures deemed necessary to protect the subject matter of cancelled claims.

Claims 1 and 21 have been amended. Support for the amendments is found on page 31, lines 1-3 of the specification. No new matter has been added by way of the amendments.

The Applicant appreciates the indication of allowance of claim 6, directed to an isolated promoter comprising SEQ ID NO:1.

Rejections Under 35 USC §112, First Paragraph

Written Description

Claims 1, 21, and 44-45 remain rejected under 35 USC §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

The Office Action states: "The Office requires that Applicants demonstrate that they are in possession of the claimed subject matter. In the instant application, Applicants' broadest claims are drawn to any promoter fragment of SEQ ID NO:1.... Moreover, Applicants fail to draw the nexus between structure and function that defines their claimed genus of promoter fragments. Applicants are claiming a promoter fragment comprising any number of nucleotides of SEQ ID NO:1, but Applicants have not presented by way of disclosure or example, a single promoter fragment of SEQ ID NO:1, whose promoter activity is the same as the promoter activity of the nucleotide sequence of SEQ ID NO:1."

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Claims 1 and 21 have been amended to delete recitation of functional fragments. Applicants expressly reserve the right to file continuation applications or take such other appropriate measures deemed necessary to protect the cancelled subject matter. It is believed the amendment obviates the rejection and places the claims in condition for allowance.

Enablement

Claims 1, 21 and 44-45 remain rejected under 35 USC §112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Office Action states: "The Office contends that Applicants have not disclosed information correlating the isolated nucleic acid molecule of SEQ ID NO:1 with any expression data, other than the Northern analysis of the endogenous gene. Given the lack of expression data, it would not be clear to one of skill in the art, if the isolated promoter of SEQ ID NO:1 actually directs expression as is observed for the endogenous gene."

Claims 6, 41, 44, and 45 have been cancelled. Claims 1 and 21 have been amended.

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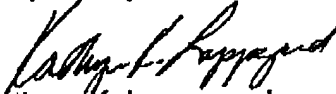
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CONCLUSION

For the foregoing reasons, reconsideration and allowance of the claims is respectfully requested.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-1852.

Respectfully submitted,


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